

REMARKS

The above Amendments and these Remarks are in reply to the non-final Office Action mailed July 14, 2005. Claims 1-14 and 16-29 were pending in the Application prior to the outstanding Office Action. In the present Amendment, claim 1-5, 7-14, 17, 19, 24-29 are being amended, and claims 16 and 21-23 are being canceled (claim 15 was previously canceled). Accordingly, claims 1-14, 17-20 and 24-29 remain for the Examiner's consideration, with claims 1, 7, 14, 17, 18, 19, 24, 25, 26 and 29 being independent. Reconsideration and withdrawal of the outstanding rejections are respectfully requested.

I. SUMMARY OF CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-7, 9-14, 16, 17, 19, and 21-29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Candelaria (U.S. Patent No. 6,497,646), in view of Horowitz (U.S. Patent No. 4,815,449) and Rapach et al. (U.S. Publication No. 2004/0015037). Additionally, claim 8 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Candelaria (U.S. Patent No. 6,497,646), in view of Horowitz (U.S. Patent No. 4,815,449) and Rapach et al. (U.S. Publication No. 2004/0015037), and further in view of Yu (U.S. Patent No. 6,200,255).

II. EXAMINER INTERVIEW SUMMARY

Applicants thank Examiner Gilbert for granting Applicants' undersigned representative a telephonic interview on September 23, 2005. During the interview, exemplary claims 1 and 29 were discussed, and an agreement was reached that the claims would be allowable over the art of record if they were amended to recite that the strands with custom distal end spacings were configured to be implanted to the same depth using needles that are inserted to the same depth.

III. DISCUSSION OF CLAIMS

Independent claims 1, 7, 14, 17, 19, 24, 25, 26 and 29 have been amended in accordance with the suggestions provided by the Examiner during the above mentioned Examiner Interview. Support for the amendments are provided in the application as originally filed. Accordingly, no new matter has been added. Applicants respectfully request that the 103(a) rejection of these claims, and the

claims that depend therefrom, be reconsidered and withdrawn.

Applicants note that there were no prior art rejections of claims 18 and 20 in the Office Action of July 14, 2005. Claims 18 and 20 were indicated as being allowable in the previous Office Action of January 26, 2005. Accordingly, these claims are presumed to still be allowable over the prior art of record.

IV. DOUBLE PATENTING

Claims 1-14 and 16-29 were rejected under the judicially created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1-31 of U.S. Patent No. 10/397,940 in view Horowitz, because the claims of the '940 application included molding a treatment strand without using prefabricated spacers, and Horowitz allegedly made the including of distal end spacers obvious.

The pending independent claims, with the exception of claim 18, have been amended to further highlight features of the present invention. For example, many of the claims now specify that the custom distal end spacers are used to satisfied a treatment plan when the distal ends of the treatment strands are implanted to the same depth using needles that are inserted to the same depth, and that the custom distal end spacings of the at least two of the strands have different lengths. Such features, and other related features, are not claimed in the co-pending '940 application, nor taught in Horowitz. Accordingly, it is respectfully requested that the double patenting rejections of the claims be reconsidered and withdrawn.

With regards to claim 18, the claims of the co-pending '940 application do not appear to be at all similar to that which is claimed in claim 18. Accordingly, Applicants respectfully request that the double-patenting rejection of claim 18, and its dependent claim 19, be reconsidered and withdrawn.

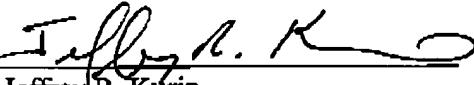
V. CONCLUSION

In light of the above, it is respectfully requested that all outstanding rejections be reconsidered and withdrawn. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this reply, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: September 23, 2005

By: 
Jeffrey R. Kurin
Reg. No. 41,132

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Facsimile: (415) 362-2928
Customer No. 23910